IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
ORDER
S.B. Civil Writ Petition No.5679/06
Chetna Dadhich & Anr. Vs. Mehrunnisa & Ors.

11.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Mahesh Sharma for petitioner.

REPORTABLE

The petitioner has challenged the order dated 1.4.2006 passed by Rent Tribunal, Kota whereby his application for dismissing the petition filed by the respondent landlord for eviction of the petitioners tenant from their premises on account of personal bona fide was rejected. Application was filed on the ground that the landlord had already earlier filed a suit for eviction against the tenant on the ground of default which

was dismissed on 10.4.2003 and appeal thereagainst was pending before this Court.

I have heard Shri Mahesh Sharma, the learned counsel for the petitioner.

Shri Mahesh Sharma, the learned counsel for the petitioners argued that the Rent Tribunal erred in law in not appreciating the provisions of Section 32 (3)(1)(a) of the Rajasthan Rent Control Act, 2001 according to which when already earlier suit / appeal between the landlord and tenant in regard to tenanted premises was pending at the time of enforcement of the Rajasthan Rent Control Act, 2001, (for short- `the Act') the landlord was required to obtain permission of the Court for filing fresh application for eviction under Section 6

and 9 of the Act. In the present case, the landlord initiated the proceedings for ejection of the tenant in relation to the same disputed property for which the appeal was presently pending before this Court. The petition was therefore not maintainable and was liable to be rejected.

The provisions of Section 32 of the Act, on interpretation of which hinges the decision of this petition, is reproduced hereunder for the facility of reference:-

> 32. Repeal and savings-(1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No.17 of 1950) shall stand repealed with effect from the date notified under sub-section (3) of section 1 of this Act.

(2) The repeal under sub-section (1) shall not affect-

(a) anything duly done or suffered under the enactment so repealed; or

(b) any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.

(3) Notwithstanding the repeal under sub-section (1)-

(a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any court shall be

continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eight days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which

was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of which such appeal or proceeding originated, was filed;

(b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) all prosecutions instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law:

(d) any rule or notification made or issued under the repealed Act and in force on the date of commencement of this Act shall continue to govern the pending cases.

Reference in the present case has been made to sub-section 3 (1)(a) of Section 32 of the Act which mandates that if the landlord wanted to file a fresh petition for eviction of the tenant, he was required to obtain permission of the Court prior to doing so. Section 32 (3) (1)(a) interalia provides that “all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eight days of coming into force of this Act shall be entitled to withdraw any suit or

appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of which such appeal or proceeding originated, was filed".

What was intended to be withdrawn was the pending suit or appeal, as would be evident from the language used in sub-

section 3(1)(a) that the “plaintiff within a period of one hundred and eight days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act”. A right has therefore been given to the plaintiff to decide to withdraw the suit or appeal as the case may be to institute fresh proceeding under the Act of 2001 on the basis of same cause of action and grounds on which that suit / appeal was filed. Such fresh proceedings are required to be filed within a period of 270 days i.e. nine months and if so done, such fresh proceedings shall be deemed to have been filed on the date of filing of the suit / appeal / other proceedings which were so withdrawn.

Right has therefore been conferred on the plaintiff / appellant to continue the proceedings under the old Act for which clause (c) of sub-section (3) of Section 32 provides that all prosecutions instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law, including the right of appeal which has been provided in clause (b) providing that “the provision for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of thereunder”. If however the plaintiff does not decide to withdraw the suit or the appeal in case the suit or appeal is pending at the time of commencement of Act of 2001, it would be

continued and decided in accordance with old law. Such non withdrawal of suit or appeal however does not debar instituting a fresh proceeding by filing fresh petition under any of the provisions of the Act of 2001 provided it is based on a fresh cause of action, though nature of ground for ejectment may even be same.

In the present case, if the provisions of Section 32 are correctly projected upon the facts of the present case, it is found that the application which has been filed afresh by the respondent landlord under the provisions of Section 6 and 9 of the Act of 2001 is based on the ground of bona fide necessity which is a fresh cause of action and is distinct and different from the cause of action of default on which

the earlier suit was filed and appeal arising out of which is pending before this Court. In these facts, the landlord was not required to procure any fresh permission from the Court for filing said petition.

I therefore do not find any error in the order of learned Tribunal. The writ petition is therefore dismissed.

(Mohammad Rafiq),J.

Rs/-